

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NORTH CAROLINA
3 WESTERN DIVISION

4 -----)
5 UNITED STATES OF AMERICA,)

6 vs.)

7 KEITH LAMONT TUTT,)
8 Defendant.)
9 -----)

5:17-CR-00142-D-1

9 OCTOBER 12, 2017
10 SENTENCING HEARING
11 BEFORE THE HONORABLE JAMES C. DEVER III
12 CHIEF UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

14 On Behalf of the Government:

15 LESLIE K. COOLEY, ASSISTANT U.S. ATTORNEY
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18 On Behalf of the Defendant:

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24 United States District Court
Raleigh, North Carolina
25 Stenotype with computer-aided transcription

1 (Thursday, October 12, 2017, commencing at 1:00 p.m.)

2 P R O C E E D I N G S

3 THE COURT: Good afternoon and welcome to the United
4 States District Court for the Eastern District of North
5 Carolina.

6 The first matter we'll take up is the sentencing of
7 Keith Tutt.

8 Good afternoon, Ms. Vavonese, are you and Mr. Tutt
9 ready to proceed?

10 MS. VAVONESE: Your Honor, at this point Mr. Tutt
11 would like to be heard on withdrawing his plea.

12 THE COURT: Okay. At this time I ask that the
13 defendant be sworn.

14 (The defendant, Keith Lamont Tutt, was duly sworn.)

15 THE COURT: Mr. Tutt, do you understand that, having
16 been sworn, your answers to my questions are subject to penalty
17 of perjury and if you were to lie to me you could be prosecuted
18 for perjury or for making a false statement?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you taken any kind of medicine or
21 any other substance in the last 48 hours that would affect your
22 ability to hear and understand these proceedings?

23 THE DEFENDANT: No, sir.

24 THE COURT: Do you know why you're here today?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Ms. Vavonese, do you have any reason to
2 doubt Mr. Tutt's competence to go forward here today?

3 MS. VAVONESE: I don't, Your Honor.

4 THE COURT: Did the Government have any reason to
5 doubt his competence to go forward today?

6 MS. COOLEY: No, Your Honor.

7 THE COURT: Mr. Tutt, your counsel indicated that you
8 want to be heard on withdrawing your plea of guilty. You
9 entered a plea of guilty in this Court to two charges:
10 Conspiracy to distribute and possess with intent to distribute
11 5 kilograms or more of cocaine, and possession of a firearm in
12 furtherance of a drug trafficking crime.

13 What do you want to say? You did that pursuant to a
14 plea agreement that you signed.

15 THE DEFENDANT: Yes, sir. I was trying to see if I
16 would be able to withdraw my plea.

17 THE COURT: On what basis?

18 THE DEFENDANT: Because I just feel like there were
19 certain things that I wasn't informed by my counsel.

20 THE COURT: Anything else you want to tell me?

21 THE DEFENDANT: No, sir.

22 THE COURT: All right.

23 Ms. Cooley, do you want to be heard?

24 MS. COOLEY: Your Honor, Mr. Tutt did sign the plea
25 agreement. I think that Your Honor's talking with him at the

1 arrangement was more than thorough in letting him know that
2 this was a final decision at that point in time. We have no
3 reason to believe that Ms. Vavonese withheld any of the
4 evidence from Mr. Tutt and that all offers have been conveyed
5 to him and we would ask that it please stand.

6 THE COURT: Do you want to say anything in response,
7 Mr. Tutt?

8 THE DEFENDANT: No, sir.

9 THE COURT: All right. The Court is to consider a
10 multitude of factors in connection with a motion to withdraw a
11 guilty plea. These factors are outlined in a number of cases
12 from the Fourth Circuit, including *United States v. Moore*, 931
13 F.2d. 245, 248 (4th Cir. 1991).

14 The Court is to consider, one, whether the defendant
15 provided credible evidence that his plea was not knowing or
16 voluntary; two, whether the defendant credibly asserted his
17 legal innocence; three, whether there was a delay between
18 entering the plea and moving for withdrawal; four, whether the
19 defendant had close assistance of competent counsel; five,
20 whether the withdrawal will prejudice the Government; and six,
21 whether the withdrawal will inconvenience the Court and waste
22 judicial resources.

23 In this case, the Court finds that the defendant has
24 provided no evidence that his plea was not knowing or
25 voluntary. The Court conducted a very thorough Rule 11

1 colloquy. The defendant was under oath during that colloquy.
2 The Court explored at length all the rights that he has under
3 the Constitution and laws of the United States. The Court
4 explained the charges against him, the potential penalties he
5 faced, the rights he would be giving up if he decided to plead
6 guilty. The Court also thoroughly examined and discussed with
7 him the plea agreement that he had entered.

8 At the conclusion of that process, which the Supreme
9 Court has repeatedly declared to be a solemn process undertaken
10 in open court, the defendant entered a knowing and voluntary
11 plea. The Court made findings to that effect on the date of
12 the plea.

13 The second factor is whether the defendant credibly
14 asserted his legal innocence. The answer to that is no.

15 The third factor is whether there was a delay between
16 entering the plea and moving for withdrawal. The defendant's
17 plea was entered some time ago. He moved to withdraw here on
18 the date of his sentencing. There was a delay in him doing
19 this.

20 The fourth factor is whether the defendant had close
21 assistance of competent counsel. Ms. Vavonese is excellent
22 counsel, appears here regularly. The Court finds that he did
23 have the close assistance of competent counsel.

24 Five, whether the withdrawal will prejudice the
25 Government. The Court finds that the withdrawal will

1 prejudice the Government.

2 The sixth factor is whether the withdrawal will
3 inconvenience the Court and waste judicial resources. The
4 Court has already conducted an extensive colloquy as part of
5 the Rule 11 process. The Court also has prepared for
6 sentencing. We're here on the day of sentencing and Mr. Tutt
7 has made this motion, the motion lacks merit and the motion to
8 withdraw the guilty plea is denied.

9 Anything else, Ms. Vavonese, before we proceed to
10 sentencing?

11 MS. VAVONESE: If you'll give me one second, Your
12 Honor.

13 I think we're ready to proceed, Your Honor.

14 THE COURT: Is the Government ready?

15 MS. COOLEY: Yes, Your Honor.

16 THE COURT: The defendant has been sworn.

17 And the Court advises you, Mr. Tutt, that we're here
18 today, you have entered a plea of guilty to two charges: The
19 first charge is conspiracy to distribute and possess with
20 intent to distribute 5 kilograms or more of cocaine. The
21 second charge is possession of a firearm in furtherance of a
22 drug trafficking offense. You entered a plea of guilty to
23 those charges pursuant to a plea agreement.

24 In light of some cases from the Supreme Court of the
25 United States, including the Booker, Rita, Gall, Kimbrough,

1 Spears and Nelson cases, the sentencing guidelines are no
2 longer mandatory; they're advisory.

3 Nevertheless, in accordance with those cases and
4 numerous cases from the Fourth Circuit, including the Carter,
5 Pauley, and Evans cases, the Court is still to take into
6 account the now-advisory guidelines.

7 The Court does this initially by making findings of
8 fact, including issues associated with determining an advisory
9 guideline range. The Court will then consider any motion that
10 might be made that might move that range either up or down.
11 I'll then consider all arguments your lawyer makes on your
12 behalf, any statement you'd like to make, and all arguments of
13 the Assistant United States Attorney. I'll then determine your
14 sentence and announce it here in open court.

15 Ms. Vavonese, did you receive a copy of the
16 presentence report?

17 MS. VAVONESE: I did, Your Honor.

18 THE COURT: Mr. Tutt, did you receive a copy of that
19 report?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Have you talked with your lawyer about
22 that report?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: At this time, the Court directs that the
25 presentence report be placed in the record under seal.

1 In accordance with Rule 32 of the Federal Rules of
2 Criminal Procedure, the Court accepts as accurate the
3 presentence report, except as to matters in dispute as set
4 forth in the addendum.

5 The addendum does contain two objections. The
6 objections do not appear to affect the -- excuse me. Has three
7 objections.

8 Does the defendant want to be heard on those? The
9 first one has to do with his name and date of birth and Social
10 Security number and any other aliases. He denies having any
11 other aliases. Probation responded that the information is
12 from a NCIC database including a street name of Chief.

13 MS. VAVONESE: Your Honor, we would like to be heard
14 on Objections 2 and 3.

15 THE COURT: So Number 1 is withdrawn?

16 MS. VAVONESE: That's correct, Your Honor.

17 THE COURT: I'll hear you on Number 2.

18 Mr. Tutt, you may have a seat while we take these
19 objections up.

20 I'll also alert counsel that acceptance of
21 responsibility is now at issue in light of the motion that was
22 made to begin this hearing.

23 MS. VAVONESE: Okay, Your Honor.

24 Mr. Tutt disputes that he was discussing on the
25 wiretap that he was a member of a drug trafficking organization

1 and that Maurio Mitchell provided him instructions on how to
2 operate that drug trafficking organization in his absence.

3 He does not deny that he had conversations with
4 Mr. Mitchell, but denies the substance of those.

5 THE COURT: But he admits conspiring with him as part
6 of the distribution of the cocaine but just not while he was in
7 jail, is that what the contention is?

8 MS. VAVONESE: I think, Your Honor, that the
9 contention is specifically that what is alleged to have been
10 said on the wiretaps is what Mr. Tutt disputes.

11 THE COURT: All right.

12 Ms. Cooley, do you want to say anything in response?

13 MS. COOLEY: Your Honor, with respect to that, I do
14 have a line sheet to hand up to the Court that is one
15 conversation between Mr. Tutt and Mr. Mitchell.

16 THE COURT: Okay.

17 MS. COOLEY: It's marked as Government's Exhibit 1
18 for sentencing. It's just an example of -- although Mr. Tutt
19 was not captured many times on the wiretap with Mr. Mitchell,
20 he was captured at least this time and several other times, and
21 this is a conversation, the Government would contend based upon
22 the agent's training and experience, between Mr. Mitchell and
23 Mr. Tutt during which they are discussing an incoming shipment
24 of cocaine. So that would be one example of the conversation
25 between Mr. Mitchell and Mr. Tutt.

1 However, Your Honor, they were the type of friends or
2 associates, rather, that would go to FaceTime, as Your Honor
3 heard in the trial of Sandy Darnell Ledbetter. That was often
4 something Mr. Mitchell employed, he would take people to
5 FaceTime. And there was a large amount of information that we
6 missed on the wire because of the use of FaceTime. And
7 Mr. Tutt was certainly close enough with Mr. Mitchell that they
8 would employ that method of communication, not just on the wire
9 itself.

10 So that in front of you, Your Honor, is one example
11 of that communication between the defendant and Mr. Tutt.

12 Additionally --

13 THE COURT: That goes to the issue of where the
14 probation officer responds in March 2016, the FBI conducted
15 wiretaps on Mitchell's phones during which time Tutt was
16 overheard receiving instructions from Mitchell to conduct drug
17 transactions. You say Government Exhibit 1 is evidence of
18 that?

19 MS. COOLEY: I would, yes, Your Honor.

20 We also have Agent Thomas here to put him on the
21 stand if need be.

22 I would also proffer to the Court regarding the jail
23 calls that there were jail calls, several, in fact, between
24 Mr. Mitchell and Mr. Tutt after Mr. Mitchell was arrested.
25 There was a lag time between when Mr. Mitchell was arrested and

1 when several of the other associates who ultimately in the
2 indictment were arrested. And during that time, he had several
3 conversations with individuals over the jail phones.

4 One conversation in particular that he had with
5 Mr. Tutt was a conversation during which he tells Mr. Tutt that
6 Unk (phonetic) and the old lady has to see Mr. Mitchell in the
7 jail first so then he can send them to meet with Mr. Tutt. And
8 based on the agent's training and experience we believe that to
9 mean there are going to be instructions given to Mr. Tutt via
10 these two individuals who were coming to visit with
11 Mr. Mitchell.

12 Further, Your Honor, on another jail call
13 Mr. Mitchell says to Mr. Tutt, You need to make C your new
14 mechanic. And C is Carl Harris. Referring to being your new
15 mechanic is essentially the right-hand man at Elite Auto, the
16 front business that Mr. Tutt was conducting this drug
17 trafficking business on behalf of Mr. Mitchell out of. Making
18 him his new mechanic means that Carl Harris needs to be the new
19 right-hand man.

20 When Maurio Mitchell was arrested, Carl Harris was in
21 the car with him and Carl Harris was known to be Mitchell's
22 right-hand man for a long period of time. And once Mitchell is
23 arrested he is essentially giving Carl Harris to Tutt instead
24 of Mike J., who apparently could not be trusted any longer.
25 Those were individuals known to us and developed throughout the

1 investigation to be involved in this organization.

2 Further, Your Honor, the individuals that had
3 previously dealt with Mr. Mitchell, including some that were
4 included in his indictment, Rashad Jackson and Brian Scott and
5 others who were not, Peter Torres and Torres Scott, would go up
6 to Elite Auto. After Mitchell was arrested, they would now go
7 to Keith Tutt at Elite Auto to further that business.

8 All of those things, Your Honor, the Government would
9 say in response to Objection 2 that Mr. Mitchell, in fact, was
10 passing the torch to Mr. Tutt; and based upon our
11 investigation, we believe that to be the case.

12 THE COURT: All right. I'll hear another objection
13 and then I'll let you put the agent on so we get all the
14 testimony from the agent at one time and then I'll make
15 findings on these and then we'll talk about acceptance of
16 responsibility.

17 Do you want to be heard on the third objection, Ms.
18 Vavonese?

19 MS. VAVONESE: Yes, Your Honor.

20 On the third objection, our objection is there -- in
21 the presentence report it indicates that the shotgun that was
22 seized from the alleged stash house was loaded.

23 THE COURT: Do you dispute that it was a stash house,
24 I mean, a house that is filled with cocaine and money? What
25 would you call it, a residence to raise a family in?

1 MS. VAVONESE: I don't dispute that it was a stash
2 house, Your Honor.

3 THE COURT: Let's not call it an alleged stash house.
4 Let's be honest.

5 MS. VAVONESE: The place where the shotgun was
6 seized, the objection is that the shotgun was loaded.

7 THE COURT: All right.

8 The Government can call the agent to testify as to
9 Objection 2 and Objection 3.

10 TIMOTHY THOMAS

11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. COOLEY:

14 Q. Good afternoon, Investigator Thomas.

15 A. Good afternoon.

16 Q. By whom are you employed?

17 A. I'm employed by the City of Durham, and I am currently a
18 Task Force Officer with the FBI in Raleigh.

19 Q. How long have you been so employed?

20 A. 2003.

21 Q. Before that and during this time, have you primarily been
22 investigating drug trafficking offenses and gang offenses?

23 A. Yes, ma'am.

24 Q. And you were the lead case agent in the case against
25 Maurio Mitchell; is that correct?

1 A. Yes, one of the lead case agents.

2 Q. And during our investigation in that particular case, did
3 you come to develop evidence regarding the relationship between
4 Maurio Mitchell and Keith Tutt?

5 A. Yes, I did.

6 Q. Tell us how you developed that information.

7 A. Specifically, starting with the wiretaps, the wire call
8 that's already been mentioned, based on my training and
9 experience was indicative of a drug transaction between Mr.
10 Mitchell -- instructing Mr. Tutt in regards to a drug
11 transaction.

12 After that we also had a cooperating witness or
13 cooperating defendant, Mr. Kentrail Carlton, that talked about
14 the relationship between Mr. Tutt and Mr. Mitchell. Basically,
15 that they had Elite Auto, that it was a front business for
16 them. Mr. Mitchell was more of a role of a silent partner but
17 it was both of their businesses.

18 Q. Now, to develop that point a little bit more for the
19 record, with respect to Mr. Carlton, what was his relationship
20 or knowledge base for Mr. Mitchell?

21 A. Mr. Carlton and Mr. Mitchell were very close. Mr.
22 Mitchell supplied Carlton with kilograms of cocaine throughout
23 their relationship that I believe lasted, according to
24 Mr. Carlton off the top of my head, approximately 10 years.

25 Q. And with respect to Elite Auto you said that Mr. Mitchell

1 was a silent partner. Do you have any other physical evidence
2 tying him to that location?

3 A. On the day of the search warrant of Elite Auto, Mr.
4 Mitchell's driver's license was in the desk drawer of Elite
5 Auto.

6 Q. Now, with respect to Mr. Tutt and Mr. Mitchell and how the
7 organization was run, what information did we get from the jail
8 calls after Maurio Mitchell was arrested that indicated what
9 the relationship was there?

10 A. Well, one jail call specifically Mr. Mitchell instructs
11 Mr. Tutt basically Mike J., who is Mike Judd, part of the
12 organization at that time, don't mess with Mike J., he's not
13 reliable, was the gist of their conversation, but deal with C,
14 which is Carl Harris, bring him on as your new mechanic.

15 Q. And based upon your training and experience and also your
16 knowledge that developed of this organization over the course
17 of the investigation, what did you understand that to mean?

18 A. Bring him into the organization; that he could be trusted.
19 You know, bring him on, take care of him.

20 Q. Now, with respect to the timing of that particular
21 conversation, this is after Maurio Mitchell had been arrested
22 on our indictment, correct?

23 A. Yes.

24 Q. What was Carl Harris doing after Maurio Mitchell was
25 arrested?

1 A. After that he also would receive instructions from
2 Mitchell basically cleaning up the organization. And Carl
3 Harris throughout our wiretaps was -- he was always with Mr.
4 Mitchell, kind of a right-hand man role, spent countless hours
5 surveilling them together.

6 Q. And on the day Mitchell was arrested, Mr. Harris was with
7 him?

8 A. They were together.

9 Q. With respect to Elite Auto, after we indicted Mitchell and
10 some other individuals in his organization, did we continue an
11 investigation into Elite Auto?

12 A. Yes, we did.

13 Q. What did we do?

14 A. Part of that investigation involved a pole camera that was
15 placed on Elite Auto, the countless hours of surveillance which
16 we confirmed what the wire call and people were telling us that
17 cocaine was being distributed from there. We saw numerous
18 individuals that were intercepted on our wire now begin to
19 frequent Elite Auto. When we say "frequent," they were there
20 for two or three minutes. Not getting a car worked on, they
21 would go in, go into the office and then quickly leave.

22 Q. Who were some of those individuals?

23 A. Specifically, Brian Scott for the month that he was still
24 not in custody, Carl Harris was there, but he wasn't there in a
25 mechanic role. He was there for five minutes and then left.

1 Torres Scott which was intercepted on our wire, Peter Torres,
2 which was also intercepted on our wire.

3 Q. Rashad Jackson?

4 A. Yes. Actually, the day before we arrested Mr. Tutt we saw
5 Mr. Jackson at the business.

6 Q. That was after Mr. Jackson had pleaded guilty, served his
7 time and got out on our case?

8 A. That's correct. He was on probation.

9 MS. COOLEY: I have no further questions with respect
10 to the relationship between Mr. Mitchell and Mr. Tutt.

11 THE COURT: How about with respect to the gun?

12 MS. COOLEY: Yes, Your Honor. Thank you.

13 BY MS. COOLEY:

14 Q. With respect to the gun that was seized, the shotgun, was
15 it loaded when we seized it from the stash house?

16 A. No, ma'am. The drums that serve as the magazine in this
17 gun were loaded but not inserted into the shotgun.

18 Q. So we had the shotgun, the loaded drums and the drums fit
19 into the shotgun?

20 A. Correct. It's an AK-47 style shotgun so it's loaded
21 differently than what would be a traditional pump shotgun.

22 MS. COOLEY: No further questions.

23 THE COURT: Cross-examination?

24 MS. VAVONESE: Yes.

25 CROSS-EXAMINATION

1 BY MS. VAVONESE::

2 Q. You indicated that on the jail call that Maurio Mitchell
3 instructed Mr. Tutt to deal with C and to bring him on as the
4 new mechanic. To your knowledge, did Mr. Harris -- did
5 Mr. Tutt ever hire Mr. Harris or have dealings with Mr. Harris?

6 A. Carl Harris?

7 Q. Yes.

8 A. The only indication we have was that their dealings were
9 drug in nature. Basically, in our term of our surveillance we
10 know who worked there, there were two individuals that worked
11 there and at no point did we ever observe Mr. Carl Harris in a
12 working capacity at the auto shop.

13 Q. Did you observe Mr. Harris with Mr. Tutt in other areas of
14 life, not at Elite Auto?

15 A. No. After the arrest of Mr. Mitchell, the place we would
16 see Mr. Harris was at Elite Auto.

17 Q. And you indicated on the wire there were folks who you
18 were also investigating who regularly frequented Elite Auto,
19 Mr. Scott and Mr. Jackson. Do you know that they didn't have a
20 legitimate business at Elite Auto?

21 A. The nature of their business, the short-stay traffic of
22 their business indicated to us that it was not legitimate in
23 nature. We did see at times, you know, they had an inspection
24 machine at Elite Auto but at no point were they pulling cars
25 into the shop or appear to be purchasing cars. It was very

1 short, five-minute-type-stay traffic at the shop.

2 Q. In particular, Mr. Jackson, you indicated that he was
3 there right before Mr. Tutt was arrested.

4 A. Yes, ma'am.

5 Q. Do you know that he wasn't there to buy a car?

6 A. We don't know for certain what his purpose was, but I can
7 say that actually we observed what was very short-stay traffic
8 with Mr. Jackson and actually conducted a traffic stop of
9 Mr. Jackson after that fact. That's how we know for certain it
10 was Mr. Jackson, but it was indicative of us based on my
11 training and experience to be the nature of drug transactions.

12 MS. VAVONESE: May I have a moment, Your Honor?

13 THE COURT: You may.

14 MS. VAVONESE: Nothing further, Your Honor.

15 THE COURT: Anything else, Ms. Cooley?

16 MS. COOLEY: No, Your Honor.

17 THE COURT: Thank you, Agent.

18 Section 3E1.1 of the guidelines states, "If a
19 defendant clearly demonstrates acceptance of responsibility for
20 his offense, decrease the offense level by two levels.

21 The application notes then note that the Court is to
22 consider a number of things in determining whether a defendant
23 has clearly demonstrated acceptance of responsibility in
24 accordance with Section 3E1.1(a). And the Court is to
25 consider, among other things, whether the defendant truthfully

1 admits the conduct comprising the offenses of conviction,
2 doesn't falsely deny any relevant conduct for which he's
3 accountable.

4 The Court also is to take into account that entry of
5 a plea of guilty prior to commencing of trial combined with
6 truthfully admitting the conduct and truthfully admitting or
7 not falsely denying any additional relevant conduct, constitute
8 significant evidence of acceptance of responsibility.

9 "However, this evidence may be outweighed by conduct
10 of the defendant that is inconsistent with such acceptance of
11 responsibility. A defendant who enters a guilty plea is not
12 entitled to an adjustment under this section as a matter of
13 right."

14 Note 5 states, "The sentencing Judge is in a unique
15 position to evaluate a defendant's acceptance of
16 responsibility. For this reason, the determination of the
17 sentencing Judge is entitled to great deference on review."

18 Ms. Vavonese, Mr. Tutt, at the beginning of this
19 hearing after having signed a plea agreement, stood in this
20 court, swore under oath that he committed these crimes, started
21 out by saying he wanted to withdraw his guilty plea. This is
22 your chance to explain to me why you think he should get
23 acceptance of responsibility and not have me take those three
24 points away and increase his guideline range.

25 MS. VAVONESE: Your Honor, this is Mr. Tutt's first

1 experience in Federal Court. And I understand what you are
2 saying. Mr. Tutt is facing a lengthy sentence and --

3 THE COURT: Which we discussed at length at his Rule
4 11 hearing when he made a knowing and voluntary choice and
5 admitted his guilt under oath, and then he starts this
6 proceeding with a stunt that is fundamentally at odds with a
7 man who has accepted responsibility for his criminal behavior.

8 I read the PSR, you're right, he hasn't been in
9 Federal Court before. This is not State Court.

10 Anything else?

11 MS. VAVONESE: Your Honor, I just -- I would ask that
12 you just consider the fact that Mr. Tutt has not had a lot of
13 dealings either in State Court and certainly not in Federal
14 Court.

15 As I said, he is facing a lengthy sentence and having
16 the opportunity to sit incarcerated for this period of time and
17 think about all of these various things and his family and so
18 forth, he just wanted an opportunity to consider his options, I
19 suppose.

20 And he is here and he is moving forward. He
21 understands that he is going to be sentenced, and he has signed
22 a plea agreement, he has filed an acceptance of responsibility
23 with Probation, he has written the Court a letter accepting
24 responsibility as well.

25 These two objections were objections as to things

1 that he felt were not exactly as they were portrayed in the
2 discovery.

3 THE COURT: Ms. Cooley, I know you have a plea
4 agreement. You don't have to say anything if you don't want
5 to. If you want to, you can.

6 I'm going to rule on all the objections and I'm going
7 to address the topic of acceptance and ask the probation
8 officer to tell me what the calculation is if he loses
9 acceptance.

10 MS. COOLEY: I would just add briefly, Your Honor, I
11 think as to Objections 1 and 3, I think they are probably fair
12 game. As to objection 3, I think it was a semantic issue,
13 which I think it was clear that the drums were loaded, the
14 drums go into the shotgun and the shotgun itself was not
15 loaded.

16 However, Objection 2 does give me pause with respect
17 to acceptance of responsibility. I do think it's the
18 fundamental crux of how we came upon Mr. Tutt and how we are
19 here. And certainly, it's clear from the wire and jail calls
20 that he and Mr. Mitchell --

21 THE COURT: And how you got to the stash house.

22 MS. COOLEY: Yes, sir.

23 THE COURT: That had the cocaine and the empty
24 kilogram wrappers and the cash.

25 MS. COOLEY: Yes, sir.

1 THE COURT: And the gun, and the drums. All evidence
2 of serious drug dealing, poisoning the community for profit.

3 All right. If he loses acceptance, he'd then be a 32
4 and a 1; is that correct, his advisory guideline range on
5 Count 1 would become --

6 THE PROBATION OFFICER: 121 to 151 months, Your
7 Honor. The other change would be to fine range would then go
8 up from 30,000 to 10 million up to 35,000 to 10 million.

9 THE COURT: Okay. Thank you for that.

10 All right. In connection with the objections, the
11 first objection has been withdrawn.

12 The second objection is overruled. I do find -- I
13 credit the agent's testimony in Government Exhibit 1 that
14 Mr. Tutt did receive instructions from Maurio Mitchell
15 concerning the drug transactions as outlined in paragraph 6 and
16 8, both in the March 2016 wire and then additionally after
17 Mitchell's arrest and while incarcerated. Mitchell himself is
18 an absolutely relentless drug dealer whose sentencing day is
19 coming. So that objection is overruled.

20 Paragraph 11 is clarified that the shotgun found at
21 Tutt's stash house where law enforcement officers seized 864
22 grams of cocaine, digital scales containing cocaine and heroin
23 residue, four empty kilogram wrappers of cocaine, and a weapon,
24 as well as large quantities of packaging material and a cutting
25 agent, that the agents also had two loaded, high-capacity

1 20-round drum-style magazines that were there. So that part is
2 sustained as clarified.

3 As for the topic of acceptance of responsibility, I
4 don't think that Mr. Tutt has accepted responsibility. I think
5 the second objection and his request to withdraw his plea here
6 both independently reflect the fact that he has not accepted
7 responsibility. He has not clearly demonstrated acceptance of
8 responsibility for his criminal behavior. I've already quoted
9 the provisions in the commentary that seem to me particularly
10 relevant and so he loses acceptance of responsibility.

11 His advisory guideline range, then, as a result is
12 calculated as follows:

13 Paragraph 58 becomes zero, paragraph 59 becomes zero,
14 paragraph 60 becomes 32. The Total Offense Level is 32,
15 Criminal History Category is 1, his Advisory Guideline Range on
16 Count 1 is 121 to 151 months. His guideline range on Count 2
17 is 60 months consecutive.

18 Does the Government object to that advisory guideline
19 determination?

20 MS. COOLEY: No, Your Honor.

21 THE COURT: As a ministerial matter, Ms. Vavonese,
22 you agree that a 32 and a 1 yields an advisory guideline range
23 of 121 to 151 months on Count 1?

24 MS. VAVONESE: I do, Your Honor.

25 THE COURT: And Count 2 is 60 months consecutive by

1 statute.

2 Having determined the advisory guideline range -- no
3 other objections to the report from the Government, correct?

4 MS. COOLEY: Correct, Your Honor.

5 THE COURT: I'll now hear first from Ms. Vavonese,
6 I'll then hear from Mr. Tutt, if he'd like to make a statement,
7 I'll then hear from Ms. Cooley.

8 Ms. Vavonese?

9 MS. VAVONESE: Yes, Your Honor.

10 As I indicated, this is Mr. Tutt's first time in
11 Federal Court. He has limited history also in State Court.

12 I have had the opportunity to get to know Mr. Tutt
13 over the last couple of months and I would tell you that the
14 person that I have gotten to know is very different than the
15 person we're hearing about here today.

16 Mr. Tutt was raised primarily by his grandmother. He
17 had a very strong and close relationship with her. She was
18 involved in all aspects of his upbringing. She taught him
19 family values and the importance of being involved. They
20 certainly had financial issues. And those financial issues led
21 to Mr. Tutt moving out on his own at a very early age, in his
22 early teens.

23 Thereafter, Mr. Tutt has had five children. Those
24 children are an example of the type of person that Mr. Tutt is.
25 His children -- his two oldest -- his oldest is in college.

1 His next oldest is headed to college this year. His children
2 range from age 22 to age 10. He has been involved on a
3 day-to-day basis with these children since their birth.

4 He has family that are here today in the courtroom.
5 He has done everything that he can to support those children
6 financially; and in my opinion more importantly, emotionally.

7 It is oftentimes that we are in a courtroom with
8 folks who do not stay in their children's lives. And the
9 success that his children have had in furthering their
10 education as they've grown and becoming responsible citizens,
11 in my opinion, that is attributable in part to Mr. Tutt's
12 involvement in their lives.

13 Mr. Tutt had a very difficult time when his grandma
14 passed away. And he has -- he would tell you that that had a
15 very big impact on his life.

16 He was the owner of Elite Auto. His criminal
17 history, as you know, is a Criminal History Category 1. He is
18 here accepting responsibility in light of what we've just gone
19 through, but he does understand the nature and circumstances of
20 why we're here and that he has made a mistake.

21 He understands also that he is going to, by your
22 judgment, lose out on lots of things with his family. Seeing
23 his children graduate from college --

24 THE COURT: By his conduct, just to be clear, right?
25 I don't schedule any appointment that takes place here.

1 MS. VAVONESE: I understand.

2 THE COURT: I will follow the law, but I don't
3 schedule these appointments. I would never have met Mr. Tutt
4 if he wasn't a drug dealer. That's why we're here, his conduct
5 and the consequences that flow from deciding affirmatively to
6 poison people, to poison communities for your own greed,
7 especially when you don't have to because he does have a
8 legitimate work history. He didn't have to be a drug dealer.
9 He chose to be a drug dealer because he wanted the money.

10 Go ahead.

11 MS. VAVONESE: And it isn't just that Mr. Tutt is
12 going to miss out on these experiences with his family. More
13 importantly, his family is going to miss out on having him
14 there. Certainly his kids didn't have anything to do with his
15 conduct and they are going to suffer not having him around for
16 an extended period of time.

17 This is a case where by statute he has a mandatory
18 minimum sentence. We would be asking, Your Honor, to sentence
19 him at that mandatory minimum in light of his criminal history
20 and his familial circumstances and certainly understanding that
21 that is a very hefty punishment in light of his criminal
22 history.

23 His family is who is going to suffer most. And
24 honestly, I would tell you that that is the thing that has been
25 the hardest for Mr. Tutt. If it were just Mr. Tutt by himself,

1 I don't think we would have had many of the conversations that
2 we've had thus far today. But Mr. Tutt is very concerned about
3 his family and how his children will deal with his absence for
4 this extended period of time.

5 And while we understand that this is a mandatory
6 minimum situation, we would certainly ask that you sentence him
7 at the mandatory minimum; that you would put in any judgment
8 that he be somewhere close to home so that he has the ability
9 to have visits from these children and stay a part of their
10 lives. Mr. Tutt would also ask for any sort of drug treatment
11 that is available to him as well as any sort of vocational
12 training that he can get while incarcerated.

13 THE COURT: All right. Thank you.

14 At this time I'll hear from Mr. Tutt, if you'd like
15 to make a statement, sir.

16 THE DEFENDANT: Yes.

17 First of all, I'd like to tell Your Honor that this
18 is emotionally and spiritually getting through this situation.
19 I want to thank my family for support. I would like you to
20 forgive me for wasting your time, and ask the Government to
21 forgive me and I accept full responsibilities for my actions.

22 THE COURT: Thank you, Mr. Tutt.

23 At this time I'll hear from Ms. Cooley on behalf of
24 the United States.

25 MS. COOLEY: Thank you, Your Honor.

1 Considering the 3553(a) factors in this case when you
2 look at the nature and circumstances of this offense, it's an
3 extremely egregious offense. Just looking at its face without
4 knowing about Mr. Tutt's connection with Maurio Mitchell and
5 the scope of that organization and the violence of that
6 organization, just looking at Mr. Tutt's conduct before we even
7 look at the rest of that, you look at what was taken from his
8 stash house and it was almost a kilogram of cocaine seized
9 between his car and the stash house, four empty kilogram
10 wrappers, a loaded 12-gauge -- well, the shotgun and then the
11 drum magazines, not just for hunting, but drum magazines in an
12 AK-47 style process to protect that stash, two 50-gallon drums
13 of cutting agent, which if you double that you get maybe 200
14 pounds of product, and that's probably being conservative,
15 which is a ton of product. Three large cocaine presses, a
16 smaller heroin press, cocaine and heroin residue on packaging
17 scales, digital scale, food saver in the house. It was clearly
18 a large-scale drug trafficking operation, stash house to Elite
19 Auto, lots of traffic in and out of Elite Auto, people picking
20 up but later distributed out to the street level. And just
21 that on its face is egregious conduct, extremely egregious
22 conduct.

23 When you pair that with his relationship with Maurio
24 Mitchell, what we know about the long-term nature of Mitchell's
25 organization and the violent gang associations that that

1 organization had, and the individuals including Brian Scott,
2 who were enforcers and shooters for that organization, the
3 large amounts that were being imported by that organization
4 that clearly Mr. Tutt was involved with, to some extent, with
5 Mr. Mitchell. And then you look at Mr. Tutt's storage unit.
6 In the storage unit was an arsenal of assault rifles. It was
7 six semiautomatic rifles and one shotgun that were just located
8 in his storage unit. Again, that is egregious. For what
9 purpose could he be using those guns but to protect this drug
10 trafficking business?

11 All of this together, Your Honor, is a very, very
12 serious and high-level drug offense. This is not a small-level
13 dealer. Mr. Tutt was a large-level dealer within the City of
14 Durham.

15 Then you look at the history and characteristics of
16 this particular defendant and he is a Criminal History Category
17 1, but I would argue to the Court that that is misleading.

18 If you look at his prior convictions, you look at the
19 inhaling toxic vapors, well, that was actually pled down from a
20 possession with intent to sell and deliver cocaine. Then you
21 look at the possession with intent to manufacture, sell and
22 deliver a Schedule II, and that was pled down from a
23 trafficking Schedule II. And then you look at the possession
24 of marijuana, that was pled down from possession with intent to
25 sell and deliver all in Durham County. I don't know what was

1 going on with those situations but I know they were pled down
2 from more serious offenses to less serious offenses. And so
3 here we are here with a Criminal History Category 1.

4 But I do think it's relevant to the history and
5 characteristics of this defendant. This is not a one-off, this
6 is not the first time he's been involved with this. He cannot
7 claim this is the first he's ever known of drug trafficking
8 because that's just not. That started in 1994. He is 40 years
9 old and spent his life being a drug trafficker.

10 With respect to the seriousness of this offense, Your
11 Honor, I don't think it can get much more serious short of a
12 murder being committed, but I think that in order to protect
13 the public from Mr. Tutt, in order to deter him from this
14 future activity, he needs to receive an extremely lengthy
15 sentence.

16 When we came in here today, Your Honor, because he
17 had gotten on board early, signed a plea agreement, accepted
18 responsibility early and pled into a 15-year mandatory minimum,
19 the Government was prepared to proceed on a mandatory minimum.

20 We came in today, Your Honor, and all of a sudden
21 does not associate with Maurio Mitchell anymore in the
22 objections of the PSR and does not take on the responsibilities
23 of that organization that he very clearly had. And I think
24 that, Your Honor, in order to adequately account for that lack
25 of acceptance, I think that the Government at this point would

1 ask for a sentence toward the top of the guideline range, and
2 in addition to that the 60-month consecutive mandatory from the
3 924(c).

4 THE COURT: Thank you.

5 Ms. Vavonese?

6 MS. VAVONESE: Yes, Your Honor.

7 Just to point out regarding the convictions that
8 Ms. Cooley was discussing. As you can see from the PSR, he was
9 16 and 17 at the time. And as I explained earlier, he had just
10 moved out of his grandma's home. That's not to say that the
11 convictions didn't happen. Obviously, I'm equally as aware
12 that the convictions did happen, but I guess I would be telling
13 you that these convictions, they happened at a very early age
14 for him and then he had a consistent period of time where he
15 was not involved or convicted of any sort of crimes.

16 As it relates to Ms. Cooley's request to find him at
17 the top of the guideline range and then the additional 60
18 months, I would just go back, Your Honor, to the fact that this
19 is a mandatory minimum sentence. The 15 years at minimum that
20 he would receive is by far the longest sentence that he has
21 ever served. He is -- at this point, he has been in custody
22 for more time than he has ever been in custody before. I have
23 no doubt that this is a huge deterrence from future criminal
24 activity.

25 As Ms. Cooley indicated, he's 40 years old at this

1 point. In 15 years, he will be 55. With vocational training
2 from the Bureau of Prisons and at his age at that point in
3 time, coming back out and committing the same variety of
4 offenses is just -- based on my knowledge of Mr. Tutt is just
5 not what I think that we could expect from him.

6 So I would be asking on behalf of his family and the
7 fact that he's going to miss some significant things with his
8 children, that you stay at the mandatory minimum range.

9 THE COURT: Thank you.

10 The Court recognizes its obligation to impose a
11 sentence sufficient, but not greater than necessary, to comply
12 with the purposes set forth in the statute.

13 I have considered all arguments Ms. Vavonese has made
14 on your behalf. I have considered your statement, sir. I have
15 considered the position of the United States. I have
16 considered the advisory guideline range. I have considered the
17 letters that Ms. Vavonese submitted on your behalf.

18 Among other things, I'm to consider the nature and
19 circumstances of the offense, and the history and
20 characteristics of the defendant, the need for the sentence
21 imposed to reflect the seriousness of the offense, to promote
22 respect for the law and to provide just punishment.

23 The need for the sentence imposed to deter others who
24 might choose to engage in the criminal behavior that brings you
25 here; the need for the sentence imposed to protect the public

1 from further crime by you; the need for the sentence imposed to
2 provide you with needed education or vocational training,
3 medical care and other correctional treatment in the most
4 effective manner.

5 The statute lists numerous other factors. I have
6 considered all those factors. Although, I won't mention each
7 one individually.

8 As for the nature and circumstances of the offense,
9 there were two offenses to which you pleaded guilty. The first
10 charge was conspiracy to distribute and possess with intent to
11 distribute 5 kilograms or more of cocaine. The second was
12 possession of a firearm in furtherance of a drug trafficking
13 offense. The conspiracy took place from in or about 2016 to on
14 or about March 31, 2017. The offense conduct was serious, as
15 been described here and as reflected in the report.

16 You worked hand and glove with Mauricio Mitchell, who
17 is a very, very, large drug dealer and very, very, dangerous
18 man in connection with drug trafficking operation. You also
19 worked with him in using Elite Auto Mart as a front where you
20 also stored and sold narcotics and drug proceeds. You
21 obviously came to the attention of law enforcement as a result
22 of wiretaps and other forms of surveillance.

23 There were numerous instances where surveillance was
24 undertaken where the conduct at the store and in and around the
25 store was consistent with drug trafficking.

1 The investigation did reveal that you had a stash
2 house in the form of an apartment in Raleigh on March 31st,
3 2017. Law enforcement observed you leave Elite Auto and
4 followed you to the stash house. After you left your
5 residence, a traffic stop was initiated and K9 unit responded,
6 positively alerted, 182 grams of cocaine were found in your
7 vehicle. Search warrant was obtained for the stash house where
8 investigators seized 846 grams of cocaine, digital scales
9 containing cocaine and heroin residue, four empty kilogram
10 wrappers of cocaine, a shotgun and the 20-round drum magazines
11 that were loaded. There also was packaging material for
12 cocaine and heroin presses, food saver machine and multiple
13 blenders and strainers.

14 After that, a search warrant was executed at Elite
15 Auto where investigators seized a digital scale and a cup which
16 contained cocaine residue as well as a handgun and ammunition.
17 Search of your storage unit in Durham revealed six
18 semiautomatic rifles, a shotgun, as well as assorted ammunition
19 and magazines. All of this is evidence of large-scale drug
20 trafficking. It is a very serious offense, as we've talked
21 about here today.

22 Drug dealers are all about money. That's it. It's
23 just greed. It's greed. It's I'll poison someone else's
24 children, I'll turn a blind eye to it, I'll destroy people one
25 life at a time, one family at a time, one parent/child

1 relationship at a time, one community at a time and I won't
2 care because I want my money. And that's what life is as a
3 drug dealer. And it's a plague and it's harmful.

4 As for your history and characteristics, one of the
5 terribly ridiculous things about this case is you didn't have
6 to be doing this. You're an intelligent man. You've worked
7 legitimate jobs.

8 I read the report, Ms. Vavonese described it, you
9 have five kids, range in age from 22, your oldest in college in
10 Greenville, to a 10 year old. And I accept what she says about
11 your role in their life and your relationship in their life,
12 but a father has one responsibility, be a good example to your
13 children. And you fundamentally cannot be a good example if on
14 the one hand you say, I'm taking care of you with this money
15 I'm giving you and you're getting the money by poisoning other
16 children, and that's what drug dealers do. I'll poison
17 somebody else's community, somebody else's children, somebody
18 else's mother, somebody else's sister, somebody else's brother
19 and I'll rationalize it in my mind by saying, but I'm a good
20 dad. That's bunk. Just not true. And no one should think for
21 a minute that it is. Because all those people you're
22 poisoning, they have a mom, and a grand mom, and a dad and a
23 grandfather who hoped for more than to see them ravaged by
24 addiction. They hoped for more than to have their grandchild
25 live in a community where children and parents are worried

1 about random gunfire because of drug dealers.

2 It's a very serious offense and it took place for a
3 long period of time and you didn't have to be doing it. Yeah,
4 you wouldn't have had as much money. But again, that's what
5 the whole deal is about for the drug dealer.

6 As for your history and characteristics, you are a
7 Criminal History Category 1. I accept those charges were pled
8 down for whatever reason so I take them as they are. But this
9 conspiracy took place for a long time. It involved a large
10 amount of narcotics. It's a very serious offense. This Mauricio
11 Mitchell drug trafficking organization is a plague. It was a
12 plague, and the community is better that it's been dismantled.
13 Those who were involved need to be punished because there are
14 consequences.

15 As I mentioned earlier, I don't schedule a single
16 appointment that takes place here. We wouldn't know each other
17 except for how you chose to act.

18 A person reaps what he sows. What does that mean?
19 It means you harvest what you plant. If you plant a series of
20 good choices, then you have wonderful opportunities to gather
21 with the family. If you plant a series of bad choices,
22 testament to your family and friends who wrote on your behalf
23 and are here on your behalf to their character that they're
24 here still supporting you, because what a betrayal.

25 See, they've been loving you and supporting you your

1 whole life. Not because of money you got from drug dealing.
2 To their credit, they are here and I don't have any doubt
3 they'll continue to be supportive of you, but how disrespectful
4 of you towards them, to have engaged in this prolonged drug
5 conspiracy poisoning the community for money.

6 I am going to impose a sentence that incapacitates
7 you, that generally deters. People need to know, you want to
8 get into the drug business, grow it big, how you pay around
9 here is with liberty. And only you can say, is it worth it?
10 Is it worth poisoning people and then getting sent to prison
11 for a very long period of time?

12 Most rational people thankfully say I don't want any
13 part of that. I don't want to poison other people.

14 Having fully considered the entire record in the
15 case, it's the judgment of the Court that the defendant, Keith
16 Lamont Tutt, is hereby committed to the custody of the Bureau
17 of Prisons to be imprisoned for a term of 132 months on Count 1
18 and 60 months consecutive on Count 2, yielding a total term of
19 192 months.

20 This sentence is the sentence that is sufficient, but
21 not greater than necessary, in light of all the 3553(a) factors
22 that I've talked about here today.

23 Upon release from imprisonment, you'll be placed on
24 supervised release for five years. This term will consist of
25 five years on Counts 1 and 2 to run concurrently.

1 You'll comply with the standard conditions and the
2 following additional conditions:

3 You'll participate as directed in a program approved
4 by Probation for narcotic treatment, you'll consent to a
5 warrantless search, you'll cooperate in the collection of DNA,
6 you'll support your children. You'll have a job while
7 incarcerated. You won't earn much money at it, but what you do
8 earn you should and I order you to support your children. They
9 at least deserve that from you. You'll pay a special
10 assessment of \$200. I'm not going impose a fine in light of
11 the need to pay the special assessment and to support your
12 children.

13 I will recommend that you be kept separate from all
14 your co-defendants in connection with this case.

15 I recommend vocational and educational opportunities.
16 I'll recommend intensive drug treatment.

17 I do think I properly calculated the advisory
18 guideline range, but I announce, pursuant to U.S. v.
19 Gomez-Jimenez, 750 F.3d 370 (4th Cir. 2014), and U.S. v.
20 Hargrove, 701 F.3d 156 (4th Cir. 2012), that I'd impose the
21 same sentence as an alternative variant sentence if I have in
22 any way miscalculated the advisory guideline range, including
23 the decision with respect to the acceptance of responsibility.

24 The sentence I've imposed today is the sentence that
25 is sufficient, but not greater than necessary, for Mr. Tutt in

1 light of all the 3553(a) factors that I talked about.

2 Mr. Tutt, you can appeal your conviction if you
3 somehow believe your guilty plea was somehow unlawful or
4 involuntarily or if there's some other fundamental defect in
5 the proceeding that was not waived by your guilty plea. You
6 also have a statutory right to appeal your sentence under
7 certain circumstances, particularly if you think your sentence
8 is contrary to law.

9 However, you did enter into a plea agreement that
10 contains an appellate waiver. If you believe the waiver is
11 unenforceable or inapplicable for any reason, you can present
12 that theory to the Appellate Court.

13 With few exceptions, any Notice of Appeal must be
14 filed within 14 days of the judgment being entered on the
15 docket in your case.

16 If you're unable to pay the cost of appeal, you may
17 apply for leave to appeal in forma pauperis. If you so
18 request, the Clerk of Court will prepare and file a Notice of
19 Appeal on your behalf.

20 Ms. Vavonese, is there anything else?

21 MS. VAVONESE: The only thing that we'd ask, Your
22 Honor, is that he be placed somewhere close to home so the
23 family can --

24 THE COURT: BOP will have that home address but
25 because I think the need for a keep separate order BOP is going

1 to be the one that makes the specific decision about where he
2 gets designated.

3 Anything else, Ms. Cooley?

4 MS. COOLEY: No, Your Honor. Other than to note that
5 there's no victim in this case.

6 THE COURT: And there was a forfeiture order and I
7 have signed that. Forfeiture as part of the judgment in the
8 case as well.

9 That will conclude the matter involving Mr. Tutt.
10 Good luck to you, sir.

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12 (The proceedings concluded at 2:03 p.m.)
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1 UNITED STATE DISTRICT COURT
2 EASTERN DISTRICT OF NORTH CAROLINA
3
4

5 CERTIFICATE OF OFFICIAL REPORTER

6 I, Amy M. Condon, CRR, CSR, RPR, Federal Official Court
7 Reporter, in and for the United States District Court for the
8 Eastern District of North Carolina, do hereby certify that
9 pursuant to Section 753, Title 28, United States Code, that the
10 foregoing is a true and correct transcript of the
11 stenographically reported proceedings held in the
12 above-entitled matter and that the transcript page format is in
13 conformance with the regulations of the Judicial Conference of
14 the United States.

15
16
17 Dated this 12th day of December, 2017.
18
19

20 /s/ Amy M. Condon
21 Amy M. Condon, CRR, CSR, RPR
22 U.S. Official Court Reporter
23
24
25